

Commodity Futures Trading Commission

§ 165.12

of the reported Commodity Exchange Act violation;

(ii) Made any material false, fictitious, or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations; or

(iii) Provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported Commodity Exchange Act violations.

(d) The Commission shall not take into consideration the balance of the Fund in determining the amount of an award.

§ 165.10 Contents of record for award determinations.

(a) The following items constitute the record upon which the award determination under §165.7 shall be made:

(1) The whistleblower's Form TCR, "Tip, Complaint or Referral," including related attachments, and other documentation provided by the whistleblower to the Commission;

(2) The whistleblower's Form WB-APP, "Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act," and related attachments;

(3) The complaint, notice of hearing, answers and any amendments thereto;

(4) The final judgment, consent order, or administrative speaking order;

(5) The transcript of the related administrative hearing or civil injunctive proceeding, including any exhibits entered at the hearing or proceeding;

(6) Any other documents that appear on the docket of the proceeding; and

(7) Sworn declarations (including attachments) from the Commission's Division of Enforcement staff regarding any matters relevant to the award determination.

(b) The record upon which the award determinations under §165.7 shall be made shall not include any Commission pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Commission or its staff's determination: To file or settle the related covered judicial or ad-

ministrative action; and/or whether, to whom and in what amount to make a whistleblower award. Further, the record upon which the award determination under §165.7 shall be made shall not include any other entity's pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to its or its staff's determination to file or settle a related action.

§ 165.11 Awards based upon related actions.

Provided that a whistleblower or whistleblowers comply with the requirements in §§165.3, 165.5 and 165.7, and pursuant to §165.8, the Commission or its delegate may grant an award based on the amount of monetary sanctions collected in a "related action" or "related actions" rather than on the amount collected in a covered judicial or administrative action, where:

(a) A "related action" is a judicial or administrative action that is brought by:

(1) The Department of Justice;

(2) An appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(3) A registered entity, registered futures association, or self-regulatory organization;

(4) A State criminal or appropriate civil agency, acting within the scope of its jurisdiction; or

(5) A foreign futures authority; and

(b) The "related action" is based on the same original information that the whistleblower voluntarily submitted to the Commission and led to a successful resolution of the Commission judicial or administrative action.

§ 165.12 Payment of awards from the Fund, financing of customer education initiatives, and deposits and credits to the Fund.

(a) The Commission shall pay awards to whistleblowers from the Fund.

(b) The Commission shall deposit into or credit to the Fund:

(1) Any monetary sanctions collected by the Commission in any covered judicial or administrative action that is not otherwise distributed, or ordered to be distributed, to victims of a violation